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In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 364

ELDON E. WOLFE AND SARA A. WOLFE, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

Petitioner,[1] a career Civil Service employee of the United States Bureau of Public Roads, was sent to Iran to work on a road building project. His salary was paid by the United States, which was reimbursed by Iran. In general, the Internal Revenue Code exempts from taxation income earned by an American citizen who has worked outside the United States for at least 17 out of 18 consecutive months. Code § 911(a)(2). Excepted from the scope of this exemption are "amounts paid by the United States or any agency thereof." *Ibid.* If, as the court of ap-

[1] Mrs. Wolfe is a party only because she and her husband filed a joint return. Mr. Wolfe will be referred to as petitioner.

peals concluded, petitioner's salary earned in Iran was "paid by the United States" within the meaning of § 911(a)(2), it is taxable; otherwise, it is exempt.

That the salary was, literally, "paid by the United States" is undisputed. This should have ended the matter; but petitioner asserts that there is "uncertainty" in the "interpretation" of the statute (Pet. 4), and that the phrase "paid by" as used therein "refers to the entity which bears the economic burden of salary payment" (Pet. 5)—in this instance, presumably, Iran. The majority of the court of appeals, in rejecting these contentions below, concluded (Pet. 24):

> No such distinction based on reimbursement to the Government has been noted in any committee report or similar legislative history. If interjected into the tax law it would create invidious discriminations among the U.S. Government employees assigned for service abroad, dependent on adventitious factors having nothing to do with their employment relationship with the Government or rights to compensation from the Government.

If anything need be added to the analysis (Pet. 21–24) which led to this conclusion, we would suggest that this Court has repeatedly rejected efforts to read "economic burden" into the law in other, not unrelated, tax contexts.[2] The majority below quite

[2] See, *e.g.*, *Maximov* v. *United States*, 373 U.S. 49, 52; *Biddle* v. *Commissioner*, 302 U.S. 573, 581; *Anderson* v. *Wilson*, 289 U.S. 20, 26–27; and see also such intergovernmental immunity cases as *Oklahoma Tax Comm'n* v. *Texas Co.*, 336 U.S. 342,

correctly applied the salutary rule that "those who seek an exemption from a tax must rest it on more than a doubt or ambiguity." *United States* v. *Stewart,* 311 U.S. 60, 71.

As to the asserted conflict (Pet. 4–5) with *Erlandson* v. *Commissioner,* 277 F. 2d 70 (C.A. 9), it is nonexistent.[3] In *Erlandson,* the United States had engaged a company which, "as the government's agent 'and not as an independent contractor,'" managed a vessel owned by the United States (p. 71). The court concluded that when the agent received money from the United States and used it to pay the crew's wages, the United States had actually made the payment, through its agent. In the present case there is no principal-agent relationship between the governments of Iran and the United States.

There is no conflict of appellate decisions, and the instant decision of the court of appeals is correct. The petition for certiorari should therefore be denied.

Respectfully submitted.

THURGOOD MARSHALL,
Solicitor General.

MITCHELL ROGOVIN,
Assistant Attorney General.

HAROLD C. WILKENFELD,
Attorney.

AUGUST, 1966.

363–364; *Alabama* v. *King & Boozer,* 314 U.S. 1, 8–9; *Curry* v. *United States,* 314 U.S. 14, 18; *Helvering* v. *Gerhardt,* 304 U.S. 405, 417, 420–423.

[3] Nor is there any basis for the allegation (Pet. 5) that the government has taken an inconsistent position in *Erlandson* and other "analogous decisions."

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